



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0080]

RIN 1625-AA11

Regulated Navigation Area; Southern Oahu Tsunami

Vessel Evacuation Honolulu, HI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent regulated navigation area (RNA) in the waters off Southern Oahu, Hawaii, enforcement of which will take place only when a tsunami warning is issued for the Hawaiian Islands by the Pacific Tsunami Warning Center. Tsunami warnings require the evacuation of a large number of vessels from their respective harbors. Following the evacuation, these vessels must remain offshore until the emergency situation has passed and the harbors have been deemed safe for reentry. Past tsunami warnings have created potentially dangerous offshore traffic congestion between commercial and

recreational vessel traffic. Because of this, designated vessel traffic staging areas are necessary for a safe and orderly evacuation of Southern Oahu ports.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0080. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Commander Scott Whaley of the United States Coast Guard Sector Honolulu at 808-522-8264 ext. 3352 or Scott.O.Whaley@uscg.mil, respectively. If you have questions on viewing or submitting material to the

docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
SNPRM	Supplemental Notice of Proposed Rulemaking
RNA	Regulated Navigation Area

A. Regulatory History and Information

The Coast Guard collaborated with the Hawaii Ocean Safety Team, the Industry Advisory Board and other industry partners in the initial development of this rule. On May 14, 2013, the Coast Guard published an NPRM in the Federal Register (78 FR 28170). The Coast Guard received a number of comments which, after careful consideration, prompted the Coast Guard to make significant changes to the originally proposed rule. On October 3, 2013, the Coast Guard published an SNPRM in the *Federal Register* (78 FR 61223), under the same docket number, which reflected changes from the original rule proposed based on comments received on the NPRM. The Coast Guard received a total of one comment on the SNPRM. That comment, along with the comments received during the initial NPRM state, are

posted, without change, at <http://www.regulations.gov>.

To view the comments in full go to

<http://www.regulations.gov>, insert USCG-2012-0080 in

the "SEARCH" box, and then click "SEARCH." The

following link will take you directly to the docket:

<http://www.regulations.gov/#!docketDetail;D=USCG-2012-0080>

B. Basis and Purpose

The purpose of this rule is to provide vessels with an off-shore area to loiter in the event of a tsunami warning for Southern Oahu. In the event of a tsunami threat, both recreational vessels and commercial vessels may desire or be mandated to leave port to avoid potential damage to their vessel and the port. The creation of an off-shore area for vessels to loiter in an organized fashion is important to decrease confusion and unsafe conditions during the tsunami threat. This regulated navigation area is also crafted to decrease potentially dangerous off-shore traffic congestion between commercial and recreational vessel traffic by separating these classes of vessels.

The Coast Guard has met with industry partners, commercial mariners, and recreational boaters in the creation of this rule.

The statutory basis for this rulemaking is 33 U.S.C. 1231, which gives the Coast Guard, under a delegation from the Secretary of Homeland Security, regulatory authority to enforce the Ports and Waterways Safety Act. A regulated navigation area is a water area within a defined boundary for which regulations for vessels navigating within the area have been established to mitigate potentially hazardous conditions, such as vessel congestion, deemed to exist in that area. The purpose of this rulemaking is to provide greater safety for vessels and maritime commerce in the event of a tsunami threat.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received a total of one comment on the SNPRM published on October 3, 2013, in the Federal Register.

The commenter suggested changes to the rule to more accurately reflect use of the 50-fathom curve as a point of reference. The coordinates of the RNA and staging areas have been modified to reflect a more accurate use of the 50-fathom line as the northernmost border for the RNA. Other non-substantive edits, intending only to simplify the language, were made to

the final rule.

D. Discussion of the Final Rule

Honolulu Harbor has only one entrance for large commercial vessels and is the principle harbor of Hawaii's hub and spoke maritime commerce system. If, during an emergency, a marine incident were to occur off the southern shore of Oahu, especially near the entrance of Honolulu Harbor, the results could be devastating to Hawaii's economy and the maritime commerce system and the constituencies that rely heavily upon the system's viability.

Earthquakes off Chile and Japan in February 2010 and March 2011, respectively, resulted in tsunami threats to the Main Hawaiian Islands. These incidents emphasized the need to establish heightened safety measures, to ensure an orderly and organized evacuation plan, in order to protect the infrastructure of the southern coast of Oahu, Hawaii, including Honolulu Harbor.

In response to this risk, the Coast Guard is establishing a regulated navigation area designated as the Southern Oahu Tsunami Evacuation zone.

In the event of a tsunami warning, the Coast Guard Captain of the Port (COTP) for Honolulu will

notify the public that an enforcement period is in effect for the duration of the emergency. At the conclusion of the threat, the COTP will notify the public when the RNA enforcement period is suspended or terminated. The COTP will use all available means to notify the public about the enforcement and suspension of the RNA. Methods of communication include, but are not limited to, radio broadcasts via VHF-HF, Marine Safety Information Broadcasts (MSIB's), telephone and e-mail.

During the enforcement period, the COTP intends to deploy Coast Guard assets, if feasible, to ensure participating commercial and recreational vessels move to and stay within separate staging areas. Paragraph (b)(5) of § 165.1413 identifies an exclusionary area that will separate staging areas. This exclusionary area will measure 3.7 nautical miles long by one (1) nautical mile wide, centering lengthwise and along a line running seaward at 208 degrees southwest of the Honolulu Harbor Range light. When the RNA is being enforced, all vessels are required to remain outside the exclusionary area except for during transiting.

Three staging areas, outside of the exclusionary area, will be established. There will be one

recreational vessel staging area to the west of the exclusionary area. This recreational staging area is intended for recreational vessels departing from and returning to the Keehi Lagoon area or other areas to the west of Honolulu Harbor. The staging area east of the exclusionary area is divided into two areas; a commercial staging area and a second recreational vessel staging area. This eastern recreational vessel staging area is intended for use by recreational vessels departing from and returning to the Ala Wai Small Boat harbor and Kewalo Basin. Recreational vessels can use either the east or west staging area. The mariner's decision for which staging area to use should be based on which staging area is the easiest to transit to so as to avoid crossing the path of other vessels. The commercial vessel staging area is intended for use by all commercial vessels departing from and returning to Kewalo Basin and Honolulu Harbor.

All vessels wishing to remain within this RNA while it is being enforced must stage in accordance with this rule. However, there is no requirement that any vessel, commercial or recreational, must remain in the RNA.

A graphic of the regulated navigation area is posted on the United States Coast Guard Sector Honolulu Homeport web page (<https://homeport.uscg.mil/mycg/portal/ep/portDirectory.do?tabId=1&cotpId=27>) under the Waterways Management tab and is also posted in the docket for this rulemaking. The graphic shows how we expect to separate commercial and recreational vessels when the RNA is being enforced, but under actual enforcement conditions local commanders may vary their response as conditions warrant.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, because it would have an effect on the regulated public only in the rare circumstances of a tsunami threat, while at other times vessels will be able to transit the area freely. Therefore, it does not require an assessment of

potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit and remain in the exclusionary zone during a tsunami threat, or owners or operators of vessels otherwise intending to operate in a fashion not compatible with this rule. This rule would not have a significant impact on a substantial number of small entities because the RNA would only be

activated, and thus subject to enforcement, when a tsunami warning has been issued by the Pacific Tsunami Warning Center.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory

Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A final rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person

listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil

Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph (34)(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in this docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS
AREAS

1. The authority citation for part 165
continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter
701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1,
6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat.
2064; Department of Homeland Security Delegation No.
0170.1.

2. Add § 165.1413 to read as follows:

§ 165.1413 Regulated navigation area; Southern Oahu
Tsunami Evacuation; Honolulu, Hawaii.

(a) Location. The following area is a regulated
navigation area (RNA): All waters of the Pacific
Ocean south of the southern side of Oahu, HI extending
from the surface of the water to the ocean floor, and
is bound by a line connecting the following points: 21°
17'14"N, 157° 55'34"W; 21° 13'30"N, 157° 55'34"W; 21°
13'30"N, 157° 48'20"W; 21° 14'14"N, 157° 48'20"W thence
westward along the 50-fathom line to the beginning
point. These coordinates are based upon the National
Oceanic and Atmospheric Administration Coast Survey,
Pacific Ocean, Oahu, Hawaii, chart 19357.

(b) Regulations. You may contact the Coast Guard on

VHF Channel 16 (156.800 MHz) or at telephone number 808-842-2600, to obtain clarification on RNA transits and locations. Operations permitting, the Coast Guard plans to provide on-scene direction using Coast Guard patrol boats and assets. During the enforcement period persons and vessels wishing to remain inside the RNA must abide by the following stipulations:

(1) No person or vessel may enter into an exclusionary area 3.7 nautical miles long by 1 nautical mile wide, centered lengthwise and along a line running seaward at 208 degrees southwest of Honolulu Harbor Front Range Light, except to transit to or from the staging areas or other areas outside the zone. Loitering or lingering in the exclusionary zone is prohibited.

(2) The Western Recreational Vessel Staging area is bound by the following points: 21° 17'14"N, 157° 55'34"W; 21° 13'30"N, 157° 55'34"W; 21° 13'30"N, 157° 55'17"W; 21° 16'46"N, 157° 53'23"W and then along the 50-fathom line to the beginning point. This staging area is intended for recreational vessels departing from and returning to the Keehi Lagoon area.

(3) The Commercial Vessel Staging Area is bound by a line connecting the following points: 21° 16'48"N, 157° 52'10"W; 21° 13'30"N, 157° 54'05"W; 21° 13'30"N,

157° 51'36"W; 21° 15'55"N, 157° 50'58"W and then along the 50-fathom line to the beginning point. This staging area is intended for use by all commercial vessels intended to remain in the RNA during a tsunami treat.

(4) The Eastern Recreational Vessel Staging Area is bound by the following points: 21° 15'55"N, 157° 50'58"W; 21° 13'30"N, 157° 51'36"W; 21° 13'30"N, 157° 48'20"W; 21° 14'14"N, 157° 48'20"W and then along the 50-fathom line to the beginning point. The Commercial Vessel Staging Area borders this staging area's western edge. The dividing line between the Commercial Vessel Staging Area and the Eastern Recreational Vessel Staging Area can be determined visually. The private dayboards located in the Ala Wai Small Boat Harbor and the La Ronde Rotating Restaurant roof top restaurant form a natural range that mariners can use in daylight hours to gauge the eastern boundary of the Commercial Vessel Staging Area and the western boundary of the Eastern Recreational Vessel Staging Area. This eastern recreational staging area is intended for use by recreational vessels departing from and returning to the Ala Wai Small Boat harbor and Kewalo Basin.

(5) Located between the Western Recreational Vessel Staging Area and the Commercial Vessel Staging Area is an Exclusion Area. This area is bound by the following points: $21^{\circ} 16' 46''\text{N}$, $157^{\circ} 53' 23''\text{W}$; $21^{\circ} 13' 30''\text{N}$, $157^{\circ} 55' 17''\text{W}$; $21^{\circ} 13' 30''\text{N}$, $157^{\circ} 54' 05''\text{W}$; $21^{\circ} 16' 48''\text{N}$, $157^{\circ} 52' 10''\text{W}$ and then along the 50-fathom line to the beginning point.

(6) All vessels staging in the RNA must be seaward of the 50-fathom (300 foot) line.

(c) Enforcement period. Paragraph (b) of this section will be enforced when a tsunami warning has

been issued for the Hawaiian Islands by the Pacific Tsunami Warning Center. The COTP will notify the public of any enforcement, suspension of enforcement, or termination of enforcement through appropriate means to ensure the widest publicity, including the use of broadcast notice to mariners, notices of enforcement and press releases.

(d) Penalties. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232.

Dated: February 7, 2014

C. B. THOMAS
Rear Admiral, U.S. Coast Guard
Commander, Fourteenth Coast Guard District

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